

## AGENDA BILL APPROVAL FORM

<b>Agenda Subject:</b> Ordinance No. 6300		<b>Date:</b> March 9, 2010
<b>Department:</b> Legal	<b>Attachments:</b> Ordinance No. 6300	<b>Budget Impact:</b>
<b>Administrative Recommendation:</b>  City Council introduce and adopt Ordinance No. 6300.		
<b>Background Summary:</b>  State law provides criminal penalties for drug related activities, many of which are felonies prosecuted by the county. However, some of the violations are misdemeanors and gross misdemeanors that would be prosecuted by cities, including possession of marijuana and possession of drug paraphernalia. For that matter, paraphernalia can be charged as an infraction as well depending on the activity involved. However, while the Auburn City Code dealing with drug crimes include possession of marijuana and paraphernalia and are patterned after state law, there are some activities that are problematic but that are not specifically addressed in state law. The proposed ordinance does not seek to change state law, nor does it seek to change the provisions that are currently addressed in the Auburn City Code. However, this ordinance does seek to clarify some activity so that those activities that are spelled out more precisely in this ordinance would be enforceable, whereas they may not be enforceable or as enforceable under the current provisions of the Auburn City Code.		
A0405-1 O1.8		
<b>Reviewed by Council &amp; Committees:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission  <input type="checkbox"/> Airport  <input type="checkbox"/> Hearing Examiner  <input type="checkbox"/> Human Services  <input type="checkbox"/> Park Board  <input type="checkbox"/> Planning Comm.         </div> <div style="width: 45%;"> <b>COUNCIL COMMITTEES:</b>  <input type="checkbox"/> Finance  <input type="checkbox"/> Municipal Serv.  <input type="checkbox"/> Planning &amp; CD  <input type="checkbox"/> Public Works  <input type="checkbox"/> Other _____         </div> </div>		<b>Reviewed by Departments &amp; Divisions:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building  <input type="checkbox"/> Cemetery  <input type="checkbox"/> Finance  <input type="checkbox"/> Fire  <input type="checkbox"/> Legal  <input type="checkbox"/> Public Works         </div> <div style="width: 45%;"> <input type="checkbox"/> M&amp;O  <input type="checkbox"/> Mayor  <input type="checkbox"/> Parks  <input type="checkbox"/> Planning  <input type="checkbox"/> Police  <input type="checkbox"/> Human Resources         </div> </div>
<b>Action:</b> Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No                      Call for Public Hearing    ___/___/___ Referred to _____ Until ___/___/___ Tabled _____ Until ___/___/___		
<b>Councilmember:</b> Backus		<b>Staff:</b> Heid
<b>Meeting Date:</b> April 5, 2010		<b>Item Number:</b> IX.A.3

**ORDINANCE NO. 6 3 0 0**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF AUBURN, WASHINGTON, AMENDING  
CHAPTER 9.22 OF THE AUBURN CITY CODE  
RELATING TO CONTROLLED SUBSTANCES**

WHEREAS, the current provisions of the Auburn City Code address illegal activity with respect to controlled substances, including marijuana and drug paraphernalia, however, the current provisions, patterned after state statute, leaves some activities unaddressed; and

WHEREAS, it would be appropriate to include in the City's criminal code regarding paraphernalia further definitions and factors for determination of the violations so that the police could be more effective in addressing drug paraphernalia violations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

**Section 1. Amendment to City Code.** That Chapter 9.22 of the Auburn City Code be and the same hereby is amended to read as follows:

Chapter 9.22  
**CONTROLLED SUBSTANCES**

Sections:

9.22.010	Marijuana prohibited.
9.22.020	Drug paraphernalia prohibited.
9.22.030	<u>Drug paraphernalia – Definitions.</u>
9.22.040	<u>Drug paraphernalia – Determination.</u>
9.22.900	Statutes incorporated by reference.

9.22.010 Marijuana prohibited.

Except as authorized by the Revised Code of Washington, it is unlawful for any person to manufacture, deliver, grow, or possess marijuana.

"Marijuana" means all parts of the plant of the genus cannabis L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant;

and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. (Ord. 5682 § 1, 2002.)

#### 9.22.020 Drug paraphernalia prohibited.

A. ~~It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.~~

B. ~~It is unlawful for any person to deliver, possess with intent to deliver or to manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.~~

C. ~~It is unlawful to place in any newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.~~

No person shall possess any drug paraphernalia as defined in Section 9.22.030 of this Chapter. Possession of drug paraphernalia is a misdemeanor. An individual's first offense of this section is punishable by a mandatory penalty of 24 consecutive hours in jail and imposition of a \$250.00 fine. Any subsequent offenses shall be punishable by a mandatory penalty of 24 consecutive hours in jail and a \$500.00 fine. These fines shall be in addition to any other fines, assessments or penalties imposed. (Ord. 5682 § 1, 2002.)

#### 9.22.030 Drug paraphernalia – Definitions.

As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, smoking, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

(12) A device "designed primarily for" such smoking or ingestion set forth in this section is a device which has been fabricated, constructed, altered, adjusted or marked especially for use in the smoking, ingestion or consumption of marijuana, hashish, hashish oil, cocaine or any other "controlled substance," and is peculiarly adapted to such purposes by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding the fact that it might also be possible to use such device for some other purpose. Paraphernalia includes, but is not limited to, the following items or devices:

(a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) A smokable pipe which contains a heating unit, whether the device is known as an "electric pipe" or otherwise;

(j) Air-driven pipes;

(k) Chillums;

(l) A device constructed so as to prevent the escape of smoke into the air and to channel smoke into a chamber where it may be accumulated to permit inhalation or ingestion of larger quantities of smoke than would otherwise be possible, whether the device is known as a "bong" or otherwise;

(m) A device constructed so as to permit the simultaneous mixing and ingestion of smoke and nitrous oxide or other compressed gas, whether the device is known as a "buzz bomb" or otherwise;

(n) A canister, container or other device with a tube, nozzle or other similar arrangement attached thereto so constructed as to permit the forcing of smoke accumulated therein into the user's lungs under pressure, whether the device is known as a "power hitter" or otherwise;

(o) A device for holding a marijuana cigarette, whether the device is known as a "roach clip" or otherwise;

(p) A spoon for ingestion of a controlled substance through the nose;

(q) A straw or tube for ingestion of a controlled substance through the nose or mouth;

(r) A smokable pipe constructed with a receptacle or container in which water or other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested;

(s) Ice pipes or chillers.

#### 9.22.040 Drug paraphernalia – Determination.

In determining whether an object is drug paraphernalia under this section and Section 9.22.030 of this Chapter, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use.

#### 9.22.900 Statutes incorporated by reference.

The following statutes are incorporated in this chapter by reference:

RCW

9.47A.010 Definitions [Inhaling toxic fumes]

9.47A.020 Unlawful inhalation – Exceptions

9.47A.030 Possession of certain substances prohibited – When

9.47A.040 Sale of certain substances prohibited – When

69.43.010 Report to state board of pharmacy – List of substances – Modification of list – Identification of purchasers – Report of transactions – Penalties

69.43.020 Receipt of substance from source outside state – Report – Penalty

69.43.030 Exemptions

69.43.035 Suspicious transactions – Report – Penalty

69.43.043 Recordkeeping requirements – Penalty

69.43.090 Permit to sell, transfer, furnish, or receive substance – Exemptions – Application for permit – Fee – Renewal – Penalty

69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine – Sales restrictions – Penalty

69.43.120 Ephedrine, pseudoephedrine, phenylpropanolamine – Possession of more than fifteen grams – Penalty – Exceptions

69.43.130 Exemptions – Pediatric products – Products exempted by the state board of pharmacy

69.50.4121 Drug paraphernalia – Selling or giving – Penalty [infraction] (Ord. 5682 § 1, 2002.)

**Section 2. Implementation.** The Mayor is hereby authorized to

implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 3. Severability.** The provisions of this ordinance are

declared to be separate and severable. The invalidity of any clause, sentence,

paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

**Section 4. Effective date.** This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: \_\_\_\_\_

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

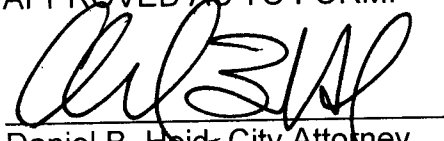
**CITY OF AUBURN**

\_\_\_\_\_  
PETER B. LEWIS  
MAYOR

ATTEST:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel B. Heid, City Attorney

Published: \_\_\_\_\_